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Note verbale dated 10 March 2003 from the Permanent Mission of Nicaragua to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Nicaragua to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) on counter-terrorism.

In this connection, the Permanent Mission of Nicaragua has the honour to transmit the report drawn up by the Government of Nicaragua pursuant to resolution 1390 (2002) (see annex).

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Annex to the note verbale dated 10 March 2003 from the Permanent Mission of Nicaragua to the United Nations addressed to the Chairman of the Committee

Introduction

The Government of Nicaragua considers that the offence of money-laundering leads to a breakdown of social, political and economic structures, encourages corruption and helps facilitate activities such as drug trafficking, terrorism and organized crime.

The President of Nicaragua, Mr. Enrique Bolaños Geyer, has stated the following with respect to this crime:

> "My Government has clearly defined its position in the fight against corruption, money-laundering and terrorism. We must unite to put an end to this scourge which erodes our principles, our democracies and our freedom."[1]

The following report contains the measures adopted in Nicaraguan territory pursuant to paragraph 2 of resolution 1390 (2002) adopted by the Security Council, thus complying with the provisions of paragraph 6 of that resolution.

The legislative and administrative provisions referred to below, such as the enactment of laws, the discussion of a draft penal code in the Legislature and the approval of the Prudential Standard for Prevention for the Laundering of Money and Other Assets, demonstrate that Nicaragua has the firm resolve and the determination to combat international terrorism in all its forms and manifestations.

Paragraph 2 of resolution 1390 (2002):

> "*Decides* that all States shall take the following measures with respect to Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them, as referred to in the list created pursuant to resolutions 1267 (1999) and 1333 (2000) to be updated regularly by the Committee established pursuant to resolution 1267 (1999) hereinafter referred to as "the Committee";
>
> "(a) Freeze without delay the funds and other financial assets or economic resources of these individuals, groups, undertakings and entities, including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons' benefit, by their nationals or by any persons within their territory;"

The legislative and administrative measures adopted to freeze the funds and other financial assets or economic resources are as follows:

1. Enactment of the Act amending and supplementing Act No. 177, the Act on Narcotic, Psychotropic and Other Controlled Substances:[2]

[1] Address by President Enrique Bolaños at a lunch organized by the Association of American Chambers of Commerce in Latin America in May 1992.

[2] Act No. 285, published in *La Gaceta, Diario Oficial* No. 69, of 15 April 1999.

It provides for the establishment of the Financial Analysis Commission, to propose policies for preventing and suppressing the crime of asset laundering, detect all activity relating to the laundering of money derived from unlawful activities and investigate and analyse possible methods utilized in that offence.[3]

More information on this subject is included in the report of the Republic of Nicaragua submitted to the Counter-Terrorism Committee pursuant to Security Council resolution 1373 (2001) (see document S/2002/585, enclosure).

For the purposes of Act No. 177 the judge may, ex officio or at the request of a party, immobilize bank accounts of accused persons or persons who have benefited from the offences committed and order an institution, company of any kind or business participating directly or indirectly in commission of the offence of laundering of money and assets deriving from unlawful activities to be placed in administration.[4]

Article 76 of Act No. 285 provides that, by court order, banking secrecy may be waived in respect of persons under investigation for any of the offences specified in the Act;

2. Discussion of the new draft penal code:

The draft is with the Justice Commission of the National Assembly, and includes a definition of the offence of money-laundering. To date, Section 1, entitled "General provisions relating to crimes, offences, penalties, consequences incidental to the criminal offence and persons criminally liable", has been approved;

3. Approval by the Superintendency of Banks and other Financial Institutions of the Prudential Standard for Prevention of Laundering of Money and Other Assets, published in *La Gaceta, Diario Oficial* No. 71 of 18 April 2002;

The Standard provides that financial institutions shall implement:

Policies incorporating the obligations laid down for those institutions in the legislation and regulations applicable to the offence of money-laundering;

Preventive and monitoring measures to ensure that the institution is not utilized for unlawful purposes associated with money-laundering;

Internal policies and procedures which shall be revised and updated in accordance with regulatory changes and the existence of new unlawful schemes identified by financial bodies or reported by the Superintendency;[5]

4. Bring to the knowledge of the competent authorities, such as the Superintendency of Banks, the Office of the Attorney-General of the Republic and the Central Bank, among others, the list of persons involved in the present resolution, for purposes of freezing the accounts of the entities and persons identified;

5. Ratification of the Central American Convention for the Prevention and Suppression of Money-Laundering Offences related to Illicit Drug Trafficking and Associated Offences, signed in Panama on 11 July 1997;

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[3] Act No. 285, article 25.

[4] In the case of financial or banking institutions it will be the Superintendency of Banks that intervenes.

[5] Article 3 (a).

6. Implementation of the Convention between Central America and the Dominican Republic for the Prevention and Suppression of Offences of Laundering of Money and Assets Related to Illicit Drug Trafficking and Associated Offences, signed on 6 November 1997 and in force since 5 May 2000;

7. Approval by the legislature of the United Nations Convention against Transnational Organized Crime and Its Protocols, signed at Palermo, Italy, from 12-15 December 2000.[6]

With regard to ensuring that nationals and/or persons within the national territory do not make funds, financial assets or economic resources available to the persons covered by the resolution, the following measures have been taken:

1. Inclusion of the customer identification procedure in the Prudential Standard for Prevention of the Laundering of Money and Other Assets, which provides in article 4 that no financial institution may engage in any type of transaction unless:

(a) The person has an account or an established relationship for such transactions with the financial institution in which the holder is identified;

(b) If the person is not an established customer, he submits to the financial institution duly verified means of identification.

Likewise, financial institutions must establish verification programmes for the identification of their clients, containing as a minimum the following:

(a) Reasonable measures to obtain and retain information about the true identity of the persons on whose behalf an account is opened and/or the services of the institution are utilized, as well as of persons authorized to sign on such accounts;

(b) Controls to prevent the opening and operation of anonymous accounts or accounts in fictitious or incorrect names;

(c) Reasonable measures within the framework of the law to obtain adequate references relating to clients, verify the reason for initiation of the relationship with the client and determine the link between accounts not corresponding to the normal profile of clients;

(d) Measures to record the services received by a given client;

(e) Approval of the agreement to open the account by an authorized person;

(f) Maintenance of updated information on the client.[7]

At the time of initiating a contractual relationship involving credits, debits or fiduciary transactions:

[6] Approved by Decree of the National Assembly No. 3246, of 13 February 2002, and published in *La Gaceta, Diario Oficial* No. 38 of 25 May 2002.

[7] Article 5 of the Prudential Standard for the Prevention of Laundering of Money and Other Assets.

(a) Means of identification (legal document whose authenticity is established beyond doubt);[8]

(b) Memorandum of association and statutes indicating the corporate purpose of the legal person;

(c) Certification of membership of the company's Board of Directors;

(d) Power of attorney or certification by the Board of Directors indicating the legal status or legal representation of the company;

(e) Taxpayer identification number;

(f) Bank, commercial or personal references;

(g) Inclusion in the relevant register.[9]

The Prevention Standard for the Prevention of Laundering of Money and Other Assets provides that financial institutions must maintain a manual, computerized or other system to facilitate extraction of data relating to all transactions involving:[10]

Sale of payment instruments such as bank cheques, cashier's cheques, traveller's cheques and the like, through the use or exchange of cash funds;

Internal and external transfers of funds or payment orders (electronically, by facsimile or by other means);

2. Obligation to report all transactions in amounts in excess of $10,000:

Financial institutions are required to report to the Superintendency of Banks individual transactions, including multiple or divided transactions, involving deposits, withdrawals, currency exchange, purchase or sale c ecurities and shares, and other financial transactions and payments or trans. s through or into the financial institution involving the exchange of cash funds and exceeding in one day the above-mentioned amount or its equivalent in national currency.[11]

"(b) Prevent the entry into or the transit through their territories of these individuals, provided that nothing in this paragraph shall oblige any State to deny entry into or require the departure from its territories of its own nationals and this paragraph shall not apply where entry or transit is necessary for the fulfilment of a judicial process or the Committee determines on a case by case basis only that entry or transit is justified."

This information was included in section (g) under paragraph 2 in the report submitted by Nicaragua to the Security Council pursuant to resolution 1373 (2001) (see appendix II).

[8] For purposes of these regulations, the following are considered as means of identifications, for Nicaraguans, the card issued by the Supreme Electoral Council; for foreigners residing in Nicaragua, a valid residence card issued by the Department of Migration and Alien Affairs and a passport; for non-residents a passport with a valid entry visa; for Central Americans CA-4 documentation.

[9] Prevention Standard for the Prevention of Laundering of Money and Other Assets, article 6.

[10] Idem, articles 11 and 14.

[11] Idem, article 17.

"(c) Prevent the direct or indirect supply, sale and transfer, to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities."

With respect to control of arms trafficking, the following measures have been adopted:

1. Incorporation of the following activities in the National Plan to Combat Terrorism and Related Offences:

Institution of information exchange between the Nicaraguan Army and the Customs Department;

Conduct intelligence, surveillance and monitoring activities at blind spots on the northern and southern frontiers;

Request customs agencies to notify the arrival or departure of their source 72 hours in advance for purposes of subsequent inspection;

Increased control and inspection in the loading of arms, munitions, spare parts and the like;

Maintenance of up-to-date information at ports and frontiers on individuals reported as suspected of arms trafficking;

Reinforcement of surveillance at frontiers, airports and ports using trained dogs;

2. Formulation of projects for the control of illicit trafficking in arms, munitions and the like in the framework of the National Plan to Combat Drugs;

3. Annual training of officials in specialized techniques for preventing arms trafficking, with the participation of the Ministry of Defence, the National Army, the National Police, the Customs Department and the Drug Control Council;

4. Purchase of equipment for customs and border posts controls;

5. Review of the Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components and Ammunition, issued by the Inter-American Drug Abuse Control Commission, with a view to identifying possible means of applying the control procedures contained in the Regulations;

6. Review of existing legislation on the possession, trafficking, exchange, sale, purchase and transfer of firearms;

7. Conduct efforts through the Commission of Central American and Caribbean Chiefs of Police to take action, sign police cooperation agreements to combat and minimize trafficking in arms, ammunition, explosives and similar items, and systematize the most effective and timely exchange of information;

8. Adoption of measures in the light of the possibility afforded by the CA-4 Agreement which provides for free transit across the frontiers of signatory countries and for facilitation of marketing in some countries, aspects which are taken advantage of by organized crime for smuggling and illicit trafficking;

9. Strengthening of police units specially trained to deal with this type of offence by creating and updating the databases of interest for the exchange of information;

10. Development of frontier actions to prevent and eradicate smuggling and arms trafficking by strengthening frontier posts and locating and identifying blind spots;

11. Strengthening of coordination with the National Army, the Department of Migration and Alien Affairs, Interpol, the Customs Department and the Ports and Airports Administration;

12. Adaptation of the legal framework to prevent and counter arms trafficking;

13. Conduct of efforts to achieve better levels of technical and specialized training so as to afford better possibilities of dealing with this type of offence;

14. Operations of the Nicaraguan Army:

Requests for daily information on the status of the Nicaraguan Army's arsenals, stores and military inventory with effect from 1 March 2002, to be submitted and updated every day through the Civil Defence General Staff;

Conduct in situ monitoring of arsenals with the technical support of the Mine Clearance Assistance Mission in Central America of the Organization of American States and under the National Mine Clearance Plan in relation to anti-personnel and anti-tank mines and explosives through the National Humanitarian Mine Clearance Commission.

Appendix I

The Superintendency of Banks and Other Financial Institutions shall assist the Financial Analysis Commission in the performance of its duties and provide it with any information at its disposal relating to the banking system or any other financial entity, in order that the Commission may examine and analyse the information and compare it with any other information in its possession in order to identify operations that may be associated with unlawful activities and may serve as documentary proof of the transaction in criminal, civil and administrative proceedings initiated in respect of the investigation of the offence of laundering of money and assets.

The Superintendency of Banks is empowered to authorize, supervise, monitor and oversee the establishment and functioning of all banks, branches and banking agencies operating in Nicaragua, whether State or private, national or foreign, habitually engaging directly or indirectly in brokerage operations regarding the supply and demand of financial resources or the provision of other banking services.[12]

[12] Article 2 of the Act on the Superintendency of Banks and Other Financial Institutions.

Appendix II

Subparagraph (g)

The following measures have been adopted at border points:

1. Increased security at the country's borders, ports and airports, through compliance with international civil aviation security standards;

2. Coordination between the Customs Department and the Department of Migration and Alien Affairs at the border ports of Guasaule, El Espino, Las Manos, Peñas Blancas and Río San Juan, so that complete information may be obtained when providing services after the scheduled hours of operation of means of transport, with a view to preventing the entry into Nicaragua of persons linked to national or international organized crime;

3. Establishment of controls on smugglers and illegal emigrants at border points in order to prevent the entry or exit of persons linked to terrorist acts;

4. Establishment of immediate operational communication between police units stationed at border areas through established border posts;

5. Establishment of strict controls over technical equipment installed for the purpose of detecting arms and explosives at the border control post situated at Peñas Blancas, on the border with Costa Rica;

6. Regulation of illegal trafficking in persons, through Act No. 240, on control of trafficking in illegal migrants, which was published in *La Gaceta, Diario Oficial*, of 20 November 1996;

7. Coordination between police chiefs and their counterparts who have responsibility for border posts within their jurisdictions, with a view to establishing a protocol for cooperation to promote joint efforts to implement the measures called for under the regional plan to combat organized crime, and consideration of the following agenda at their first meeting:

(a) Assessment of the operational situation:

- Size of the border area in square kilometres;
- Real property in the border area (farms, size of property, owners);
- Productive activity/sources of financing;
- Identification and description of the weak points used for the transport of illegal emigrants, with a view to devising operational methods for monitoring them;
- Listing of fugitives or wanted persons, including, where possible, photographs and documents that may assist in the search;
- Cases of citizens on both sides of the border previously or currently detained and for what types of offences, reports on those currently serving sentences in penitentiaries;
- Operational interest by the parties in exchanging information on pending cases in respect of which collaboration would be useful.

(b) Proposal to be jointly developed for the elaboration of specific plans to deal with manifestations of organized crime.